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 11 **UNITED STATES DISTRICT COURT**
 12 **NORTHERN DISTRICT OF CALIFORNIA**
 13 **SAN FRANCISCO DIVISION**
 14

15 CISCO SYSTEMS, INC., a Delaware
 corporation, and CISCO TECHNOLOGY,
 16 INC., a California corporation,

17 Plaintiffs,

18 v.

19 DEXON COMPUTER, INC., a Minnesota
 20 corporation,

21 Defendant.
 22
 23

Case No. 3:20-cv-04926 CRB

**DECLARATION OF LOUIS P.
 FEUCHTBAUM IN SUPPORT OF
 PLAINTIFFS' OPPOSITION TO DEXON
 COMPUTER, INC.'S RENEWED
 MOTION TO DISMISS**

Date: May 28, 2021

Time: 10:00 AM

Courtroom: 6, 17th Floor

Judge: Honorable Charles R. Breyer

25 I, LOUIS P. FEUCHTBAUM, hereby declare that I am an attorney at law, licensed to
 26 practice before this Court and all Courts of the State of California. I am a Partner at the law firm of
 27 Sideman and Bancroft, LLP, counsel of record for Plaintiffs Cisco Systems, Inc. and Cisco
 28 Technology, Inc. (collectively "Cisco," or "Plaintiffs") in the above-captioned matter. The

1 following facts are based upon my own personal knowledge, except for those facts stated on
 2 information and belief, and as to those facts, I believe them to be true. If called as a witness, I
 3 could and would competently testify to the following:

4 1. Dexon Computer, Inc. (“Dexon”) produced 617 pages of invoices that are
 5 purported to represent every Cisco-branded product that it sold to California customers between
 6 July 22, 2016 and November 20, 2020 (“Production Period”). We had the data from these
 7 invoices compiled into a document that is more conducive to review, which I have spot-checked
 8 against the invoices for accuracy. Based upon my spot-check, I believe the compilation of the
 9 invoices is accurate. The following information accurately describes data I have extracted from
 10 the invoice compilation:

- 11 a. During the Production Period, Dexon sold approximately 4,670 Cisco-branded
 12 products to 119 different customers in California.
- 13 b. In order to narrow our focus so we would be able to reasonably to serve subpoenas,
 14 follow up with respondents as might be necessary, obtain subpoena responses, and
 15 obtain feedback from Cisco regarding whether any of the products were counterfeit
 16 during the period allowed for jurisdictional discovery, we served subpoenas on
 17 only 46 of the 119 customers that Dexon identified. Those subpoenas inquired
 18 about 621 of the products that Dexon identified having sold in California.
- 19 c. Of the 621 products that the subpoenas inquired about, Cisco received information
 20 that was sufficient to analyze only 226 products to determine whether they are
 21 counterfeit.
- 22 d. Dexon purchased at least 278 items of Cisco software that it resold to California
 23 customers on 37 separate occasions.

24 2. In response to Cisco’s discovery demand for copies of all documents that Dexon
 25 transmitted to customers for each software license that Dexon sold in California, Dexon’s
 26 production included Cisco’s End User License Agreements (“EULAs”) that were in effect
 27 between May 2017 and May 2020. True and accurate copies of these EULAs are attached hereto
 28 as **Exhibit A**. The effective date of each version is visible in the footers at the center-bottom of

1 each page.

2 3. Attached hereto as **Exhibit B** is a true and accurate copy of an email string that was
 3 provided by Claremont-McKenna College (“CMC”), related to CMC’s purchase of a software
 4 license from Dexon.

5 4. Attached hereto as **Exhibit C** is a true and accurate copy of an email string that was
 6 provided by Dexon and Arbitech, LLC that Dexon filed as an attachment to a declaration in other
 7 litigation against Cisco. This email reports a complaint by Dexon about a product that Dexon had
 8 apparently acquired from Arbitech.

9 5. Federal law enforcement provided Cisco with various documents related to a
 10 reseller of computer equipment who conducted business from Anaheim, California during the
 11 course of that agency’s investigation into counterfeit trafficking. Cisco will provide all of those
 12 documents for the Court’s *in camera* inspection, if desired. It will also provide them to Dexon’s
 13 counsel, subject to entry of an adequate protective order. I have personally reviewed those
 14 documents and provide the following information on personal knowledge, based upon my
 15 personal review of them:

16 a. Attached hereto as **Exhibit D** is a spreadsheet that accurately records data that was
 17 obtained from the documents provided to Cisco by the government. It identifies by
 18 Product ID number every Cisco product that Dexon purchased from Anaheim, the
 19 quantities purchased, and also Dexon’s purchase price. In addition, for purposes of
 20 analysis, Cisco has added data reflecting the “Global List Price,” or “GLP,” for
 21 these products. I prepared the columns that contain computations for the
 22 percentage discount off of GLP that Dexon paid for each of these products.

23 b. I have personally reviewed reports on 6 of these products that Dexon procured from
 24 Anaheim, which reports were prepared Cisco engineers who examined those
 25 products. Those engineers concluded that all 6 of these products are counterfeit in
 26 that each bore a Cisco registered trademark that is identical to or nearly
 27 indistinguishable from Cisco’s actual registered trademarks, and that the
 28 trademarks had been affixed to the products without Cisco’s permission or

1 authority. An engineering analysis revealed that the products were not
2 manufactured under Cisco's authority in that they possessed significant variations
3 from genuine Cisco products. Cisco will provide all of those documents for the
4 Court's *in camera* inspection, if desired. It will also provide them to Dexon's
5 counsel, subject to entry of an adequate protective order. I have also reviewed
6 copies of documents that we received from the entity who purchased these
7 counterfeit products from Dexon. They show that the counterfeits had been
8 provided to the U.S. Navy in Guam. They also indicate that Cisco sold SMARTnet
9 contracts on 3 of these counterfeit products. Cisco's internal records indicate that
10 Dexon had procured those particular SMARTnet contracts from the Anaheim
11 reseller. Cisco will provide all of those documents for the Court's *in camera*
12 inspection, if desired.

13 I declare under penalty of perjury under the laws of the United States of America that the
14 foregoing is true and correct.

15 Executed May 7, 2021 at Berkeley, California.



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18 Louis P. Feuchtbaum